

ABORIGINAL JUSTICE IMPLEMENTATION COMMISSION

FIRST QUARTERLY REPORT

MARCH 31, 2000

Commissioners:

Paul L. A. H. Chartrand  
Wendy Whitecloud

Elders:

Eva McKay  
Doris Young



ABORIGINAL  
JUSTICE  
IMPLEMENTATION  
COMMISSION

Commissioners  
Paul L.A.H. Chartrand  
Wendy J. Whitecloud

---

440 - 500 Portage Avenue, Winnipeg MB R3C 3X1  
Phone: (204) 945-7331 Fax: (204) 948-4701

March 31, 2000

Honourable Gord Macintosh  
Minister of Justice and  
Attorney General  
104 Legislative Bldg.  
Winnipeg, MB R3C 0V8

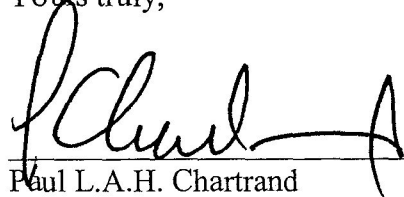
Honourable Eric Robinson  
Minister of Aboriginal and  
Northern Affairs  
344 Legislative Bldg.  
Winnipeg, MB R3C 0V8

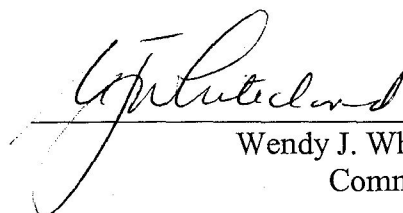
Dear Minister Macintosh and Minister Robinson:

Re: Quarterly Report

We are honoured to provide the first quarterly report of the Aboriginal Justice Implementation Commission. The report includes activities up to March 31, 2000

Yours truly,

  
Paul L.A.H. Chartrand  
Commissioner

  
Wendy J. Whitecloud  
Commissioner

## Summary

This Report covers the period November 30, 1999 to March 31, 2000. In that period the Commission,

- established and staffed its office at 440-500 Portage Ave
- obtained and reviewed reports on the status of implementation of the Aboriginal Justice Inquiry Recommendations from government departments
- met with government departments and reviewed responses
- consulted on and established emerging priorities
- consulted on and made a number of recommendations

## TABLE OF CONTENTS

Background	1
Office	2
Status of Implementation of Recommendations	3
Consultations on Priorities and Recommendations	5
Priorities	6
Recommendations	8
Next Step	9
Schedule 1, Terms of Reference	10
Schedule 2, Implementation Status of Recommendations	11
Schedule 3, Child Welfare Recommendation	18
Schedule 4, Interpretation Act Recommendation	21
Schedule 5, Minerals within Indian Reserves Recommendation	22
Schedule 6, Métis Issues Recommendation	23



## 1. Background

The Aboriginal Justice Inquiry was created by the Manitoba Government by Order-in-Council dated April 13, 1988. The Order-in-Council was later replaced by **An Act to Establish and Validate the Public Inquiry into the Administration of Justice and Aboriginal People**. The Commissioners were Associate Chief Justice, A. C. Hamilton and Associate Chief Judge, C. M. Sinclair. After extensive public hearings and research, the Inquiry submitted its report to the Manitoba Government on August 12, 1991. The report contained numerous recommendations on all aspects of the justice system as it pertained to Aboriginal people.

On November 29, 1999, the Manitoba Government established the Aboriginal Justice Implementation Commission by Order-in-Council 459, 1999. The Commissioners are Wendy Whitecloud and Paul Chartrand. Elders are Eva McKay and Doris Young. The Commission is to be:

“responsible for recommending priority areas for government action with respect to those areas for which the Manitoba Government is accountable and responsible; recommending practical, cost-effective and attainable implementation and funding strategies for the activities for priority action within existing Canadian law; reporting on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry; and communicating and consulting with Manitobans in relation to the setting of priorities and development of implementation strategies”. (O/C 459, 1999)

A copy of the Commission's Terms of Reference is attached as Schedule 1. In summary, the Commission views its immediate tasks as:

- Providing a report on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry in the areas for which the Manitoba Government is responsible and accountable.
- Consulting with Manitobans on priority areas for action.
- Consulting with Manitobans on implementation strategies.
- Providing the Manitoba Government with recommendations on practical, cost-effective and attainable, implementation and funding strategies in the priority areas as those recommendations are developed.

In carrying out its work, the Commission is required to keep in mind the Framework Agreement, entered into between Canada and First Nations and the Reports of the Royal Commission on Aboriginal Peoples.

## **2. Office**

The Commission opened its office at 440-500 Portage Avenue on December 20, 1999.

### **Commissioners**

Paul Chartrand  
Wendy Whitecloud

### **Elders**

Eva McKay  
Doris Young

### **Commission staff**

Ron Perozzo, Executive Director

Lori Sinclair, Analyst

Vanessa Everton, Administrative Assistant

Department of Aboriginal and Northern Affairs

Harvey Bostrom, Executive Director, Aboriginal Affairs Secretariat

Policy Management Secretariat

Diana Jones, Analyst

### 3. Status of Implementation of Recommendations

At the beginning of the Commission's mandate the Ministers of Justice and Aboriginal and Northern Affairs asked all government departments to provide a report on the status of implementation of the Aboriginal Justice Inquiry recommendations. The Commission received and reviewed those reports and then met with representatives of the departments of:

- Family Services
- Aboriginal and Northern Affairs
- Conservation
- Justice:
  - Corrections Division
  - Courts Division
  - Legal Aid

The Aboriginal Justice Inquiry made two hundred and ninety-six recommendations directed to the Manitoba Government, the Federal government, Aboriginal communities, and, at times, to a combination of the foregoing. Because of this implementation sometimes requires action by a government other than the Provincial government. While the Commission has heard from provincial government representatives, it has not had detailed discussions with the Aboriginal community to obtain its views on implementation. Nor, in light of its mandate, has it heard from the Federal government.

However, from the reports provided by provincial government departments it is apparent that there has not been a consistent overall plan to implement the recommendations of the Inquiry. While there have been initiatives, pilot projects and progress in some areas, overall, by and large, the recommendations have not been implemented. In some cases Aboriginal organizations with which the Commission has consulted disagree with government departments over the degree and result of implementation. Schedule 2 contains a brief general summary of the reports from Departments.

The Commission has decided to provide this at this time because;

- The departmental reports together do not provide a comprehensive review of the status of implementation. In particular, there are some recommendations for which no response has been provided, and others, where the information provided is not directly related to the actual recommendation.
- The Commission does not consider it the best use of its resources or the best interpretation of its mandate to attempt comprehensive reports on recommendations that may not be the subject of its work once the Commission has completed its priority setting exercise for the next year.



- The Commission thought it better to report now in a general sense and begin consultations and consideration of priorities to be addressed and to complete the reporting on status as part of the work to be done on recommendations selected as priorities.

#### 4. Consultations on Priorities and Recommendations

The Commission's terms of reference require it to consult with Manitobans. However, the terms of reference also recognize that there was extensive public input during the Aboriginal Justice Inquiry and as such do not contemplate or authorize formal public hearings. In carrying out its mandate the Commission has taken a number of steps to consult with Manitobans. It has met or received submissions from the following organizations or persons.

The Grand Chief of the Assembly of Manitoba Chiefs  
The Manitoba Métis Federation  
Manitoba Keewatinowi Okimakanak Inc.  
Manitoba Keewatinowi Okimakanak Youth leaders  
The Southern Chiefs Organization  
The Aboriginal Council of Winnipeg  
Dakota Ojibway Tribal Council  
The Native Women's Transition Centre  
Provincial Indian and Métis Friendship Centres  
Treaty Land Entitlement Committee Inc.  
Kathy Mallet, Ganootamag  
Colin Gillespie  
Manitoba Children and Youth Secretariat  
Dr. Barbara Daté

The Commission has established an Internet site containing the Aboriginal Justice Inquiry Report and other relevant information. Persons accessing the site may provide comments. In addition, the Commission has a toll free telephone line that anyone may call and leave comments for the Commissioners on the Aboriginal Justice Inquiry or the Commission's work. The Internet site is at [www.ajic.mb.ca](http://www.ajic.mb.ca). The Toll free line is 1-888-843-4798. The Internet site and toll free line will be advertised in all major papers and Aboriginal papers as well as Native Communications Incorporated (NCI Radio).

The Commission has also had numerous informal meetings with members of the Aboriginal and non-aboriginal community to discuss the work of the Commission.

## **5. Priorities**

The Commission recognized early that its mandate would not permit it to address all areas of the Inquiry Report and therefore decided to conduct an initial set of relatively quick consultations with Aboriginal organizations and others, to determine the areas in which it should concentrate. The results of those consultations and consultations with government Ministers and government officials as well as internal planning sessions and discussions have led to the adoption of the following emergent priority areas.

### **Child Welfare**

The Commission proposes to monitor implementation of its first recommendation and review other recommendations of the Inquiry relating to child welfare and services to families. In its consultations the Commission consistently heard the importance of examining different approaches to child welfare issues.

### **Equity Issues**

In this area the Commission groups all initiatives aimed at increasing an Aboriginal presence in government departments, efforts aimed at increasing awareness, of government staff, of Aboriginal issues and cultural awareness education. Once again this was an issue that arose often during consultations and has been highlighted in many other Aboriginal justice studies.

### **Police**

Treatment of Aboriginal people by police was another consistent theme in our consultations and a major subject of the Inquiry. This area includes employment equity issues in policing, the formation of Aboriginal police forces, civilian oversight of police forces, public complaint mechanisms for alleged misconduct and issues surrounding serious incidents involving the police and how they are investigated.

### **Community Justice**

In this category the Commission includes all activities that would lead to more involvement by the community in Justice matters. Examples include, Aboriginal probation services, community participation in sentencing, alternatives to incarceration and community justice models.

### **Early Support and Crime Prevention Measures for Youth**

All groups highlighted the need to address issues involving young people including, how youth are dealt with in the criminal justice system, the need for more alternative



approaches involving the community, crime prevention activities, educational opportunities, recreational activities, and spiritual and traditional teachings.

### **Violence towards Women and Children**

This area was highlighted in our consultations. Issues in this area include available programming, available facilities and the impact of current approaches to the issue.

### **Aboriginal Rights**

Aboriginal and treaty rights have a generalized significance running through many of the Inquiry recommendations.

### **Northern Flood Agreement**

There continues to be disagreement over implementation of the Northern Flood Agreement.

### **Treaty Land Entitlement**

The Commission heard concerns over the impact of the Treaty Land Entitlement process on Métis interests.

### **Métis Issues**

The range of issues addressed by the Inquiry continue to of concern to the Métis.

## 6. Recommendations

The Commission has made recommendations in the following areas,

- Child Welfare, January 28, 2000
- The Interpretation Act , March 24, 2000
- Mineral rights on reserve lands, March 24, 2000
- Métis Issues, March 30, 2000

The complete recommendations are attached as Schedules 3 to 6.

## 7. Next Steps

In the next quarter the Commission plans to initiate work in the priority areas, continue to consult with Manitobans, in particular Aboriginal organizations and government departments, on implementation strategies and make recommendations as they become available.



**SCHEDULE 1****Terms of Reference****Aboriginal Justice Implementation Commission  
November 1999**

The *Aboriginal Justice Implementation Commission* is established to review the recommendations of the Report of the Aboriginal Justice Inquiry (1991) and to advise the government on the recommended methods of implementing those recommendations for which the Province of Manitoba is responsible and accountable. The Commission is responsible for:

1. Recommending priority areas for action to be undertaken by Manitoba, agencies under Manitoba's jurisdiction or those organizations funded by it in the short term, and sequentially in the longer term.
2. Recommending practical, cost-effective and attainable implementation and funding strategies for the activities recommended for priority action.
3. Supporting the principles set out in the Aboriginal Justice Inquiry within a justice system that is flexible and can be administered at the local level, and which operates under the current criminal laws of Manitoba and Canada.
4. Reporting to government on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry with respect to those areas for which the Manitoba Government is accountable and responsible.
5. Communicating and consulting with Manitobans for the purpose of setting priorities and developing implementation strategies for proposed changes to the justice system. However, given the extensive public input during the Aboriginal Justice Inquiry, formal public hearings are not contemplated or authorized as part of the work of this Implementation Commission.
6. Providing recommendations to the Ministers on specific issues as they are finalized.
7. Providing status reports and implementation recommendations to the Ministers on a quarterly basis, with a view to finalization by March 31, 2001.
8. Assessing the jurisdiction to undertake the work of the Commission having regard to the Framework Agreement entered into between Canada and First Nations and the Reports of the Royal Commission on Aboriginal Peoples.

## **SCHEDULE 2**

### **Implementation Status of Recommendations**

As reported by departments. Please see comments under 3, Status of Implementation, in the Quarterly report.

### **Aboriginal and Treaty Rights**

#### ***Land Rights***

The Commission was advised that 31 First Nations have Treaty Land Entitlement (TLE) claims. Seven First Nations have signed individual TLE agreements and a Framework Agreement has been signed with Treaty Land Entitlement Inc. representing 19 First Nations. Under the Framework Agreement population figures as of October 14, 1993 are used to calculate the amount of land owed. The parties advise that implementation is under way. One outstanding issue is an Act before Parliament that will ease the transfer of selected land from the Province to First Nations.

Of the five First Nations that are signatories to the Northern Flood Agreement, four have signed Comprehensive Implementation Agreements. One First Nation, Pimicikamak Cree Nation, is in continuing discussions over implementation of the Northern Flood Agreement.

#### ***Natural Resources***

In general, specific recommendations have not been implemented. The Department of Conservation report describes initiatives that relate to some Aboriginal interests that were the subject of Inquiry recommendations. One recommendation of the Inquiry was that the Province formally renounce mineral claims on Indian reserves. The department report notes that the Province has not done this in general although it has done so for lands transferred under the Treaty Land Entitlement process. The Commission has made its own recommendation in this area.

#### ***The Special Position of the Métis***

Recommendations in this area have not been implemented.

#### ***Statutes in Conflict with Treaty and Aboriginal Rights***

The Assembly of Manitoba Chiefs and the Manitoba Métis Federation have not been invited to participate in a review of all relevant legislation that may conflict with

Aboriginal and treaty rights. The Commission has recommended that the Interpretation Act be amended as recommended by the Inquiry.

### **Aboriginal Justice Systems**

Because of the current constitutional division of powers, changes in this area require action by the Federal government.

### **Court Reform**

#### ***Changes to Court Structure and Administration***

Generally the recommendations in this area have not been implemented. Many of the recommendations, such as a single Manitoba trial court, appointment of Judges to the Manitoba Court of Appeal and the quality of court facilities in Aboriginal communities require participation by the Federal government.

The Justice department reports that the Inquiry recommendation dealing with the handling of guilty pleas is regularly followed by the Aboriginal Magistrates Court operating out of Thompson and that individual judges determine procedure in their Courts.

#### ***Eliminating Delay***

The Departmental response did not deal with the situation in all communities outside of Winnipeg, however, the Commission was advised that delay in Northern Communities was reduced well below six months, to an average of 3 to 4 months as a result of the Manitoba Keewatinowi Okimakanak First Nations Justice Strategy. Legal Aid advised that it has established procedures to reduce or eliminate any delay caused by the need to obtain legal representation.

#### ***Pre-Trial Detention***

The recommendation on bail hearings has not been implemented. The Justice department advises that Manitoba Corrections operates a bail supervision programs for both youth and adults. The Criminal Code and the discretion of the presiding Judge govern bail conditions.

#### ***Personnel***

The Inquiry recommended that the provincial Justice Department and Legal Aid Manitoba establish minimum and optimum targets for the employment of Aboriginal people at all levels. The minimum target was is to be no less that the percentage of Aboriginal people in Manitoba; the optimum to be equal to the percentage of Aboriginal people served by the department and its agencies. The Commission was advised that the Manitoba Civil Service Commission established a numerical goal for Aboriginal



representation of 10% to be achieved by the year 2003. In 1999 8.55% of the Justice department employees voluntarily self-declared themselves as Aboriginal. The Corrections division has provided in-house Aboriginal awareness sessions to approximately 85 % of its staff. Crown Attorneys are provided with information on alternative measures available.

## **Juries**

Most of the recommendations in this area have not been implemented. The Justice department advises that persons called for jury duty who are not exempt are required to attend and summonses are enforced even when sufficient jurors have responded.

## **Alternatives to Incarceration**

### ***The Need for a New Approach to Sentencing***

Recommendations in this area are directed at changes to the Criminal Code, Judges, Aboriginal communities and the provincial Justice department. Amendments to the Criminal Code and decisions of the Supreme Court require consideration of the circumstances of Aboriginal offenders and consideration of all available sanctions other than imprisonment that are reasonable in the circumstances for all offenders. Judges have invited Aboriginal communities to express their views on dispositions involving an offence or an offender from their community. The Justice department advises that the Corrections Division is in the midst of implementing an Offender Management System to provide improved data.

### ***Community Sanctions***

Regional, Aboriginally controlled probation services have not been implemented. The Justice department advises that the Corrections Division has community participation agreements with approximately twenty Aboriginal communities and service agreement with five Dakota Tribal Council communities. Across the Province 21% of probation officers are Aboriginal. In The Pas, all of the probation officers are Aboriginal. In Thompson 70% are Aboriginal.

## **Jails**

### ***Security and Jail Location and Capacity***

Recommendations in this area have largely not been implemented. The Justice department advises that high inmate populations and the large number of inmates classified as high and medium risk prevent implementation of the recommendations.

### ***Responding to Aboriginal Needs***

The Justice department advises that these recommendations have been implemented. Elders have been established at all institutions and a policy on Aboriginal spirituality has been adopted.

### ***Separation of Pre-Trial and Sentenced Persons***

The Justice department advises that it has been unable to keep adults on remand in a separate facility from those who have been convicted due to high numbers of remanded persons. Nor has it been able to cease using the Manitoba Youth Centre and the Agassiz Youth Centre as open custody or remand facilities.

### ***Work Programs***

The Commission was advised that this recommendation has been implemented and work programs have been established for eligible inmates.

### ***Parole***

This issue is in the jurisdiction of the Federal government.

### ***Aboriginal Women***

Recommendations in this area were directed at the Federal government, Aboriginal leaders, police forces and the Provincial government. The Justice department advises the family abuse teams including police officers and social workers have not been implemented. The department notes that police, government and community agencies involved in the response to domestic violence have initiated major policy and program initiatives since the Inquiry report. The Commission has not received a status report on other recommendations in this area and is in discussion with the Department of Family Services.

### ***The Sentencing of Aboriginal Women***

Recommendations in this area have largely not been implemented. The Justice department advises that it is not feasible to close the Portage Correctional Centre due to the high-risk classification levels of the population and the special needs of the inmates. The department also advises that it is not possible for all women now sent to a federal penitentiary outside Manitoba to serve their sentences in Manitoba, as appropriate facilities are not available.

## **Child Welfare**

### ***Aboriginal Peoples and the Child Welfare System in Manitoba***

The Office of Child Advocate has been established under the Child and Family Services Act.

### ***Manitoba's Child and Family Services Act***

The Manitoba Government has indicated that it is prepared to have child welfare services delivered to Aboriginal families by Aboriginal organizations. It has signed a Memorandum of Understanding on the subject with the Manitoba Métis Federation and is currently in discussions with the Assembly of Manitoba Chiefs.

### **Aboriginal Youth and the Young Offenders Act**

The Justice department advises that since the Inquiry report, significant changes have taken place in both the law dealing with young persons and the societal context in which the report was prepared. The department notes that major changes were made to the Young Offenders Act in 1995 and further changes are now before Parliament. It also notes heightened concern over youth engaging in crime at a younger age and concern over crimes involving weapons and violence.

The department advises that the RCMP, Winnipeg and Brandon Police Services all have trained personnel to deal with youth crime and all law enforcement officers must be conversant with the Young Offenders Act.

The department advises that the Young Offenders Act currently allows for the release of a young offender to the custody of a responsible person even after bail has been denied. It also advises that youth who are not eligible for bail typically require secure detention, which is difficult to provide except at a central location.

The department advises that open custody and wilderness camps have not been established throughout the province.

### ***Diversion and Alternative Measures***

The Justice department advises that youth justice committees have been allocated \$97,000 in fiscal year 1999/2000. Current department alternative measures guidelines provide that youth are eligible for alternative measures as long as certain conditions are met. In 1998/99 2,245 alternative measures cases were opened. Authority for the creation of alternative measures guidelines has not been shifted to the judiciary.

### ***Aboriginal Youth and the Justice System-General Issues***

The Department of Culture, Heritage and Tourism provides the following examples of programs for youth that relate to the Inquiry recommendation that crime prevention programs for youth, based on the development of a full range of employment, cultural, social and recreational opportunities be developed: Manitoba Aboriginal Sport and Recreation Program; Northern Recreation Directors Program; Urban Sports Camp; Native Alliance Outreach; Ganawenimig Safety and Prevention program; Partners For Careers; Mentornet; Hydro Internship Program; National Aboriginal Youth Strategy; North American Indigenous Games and the Aboriginal Youth Achievement Awards.

### **Policing**

#### ***The Role of Police in Society***

All police forces in Manitoba subscribe to the theory of community policing.

#### ***Employment Equity Programs***

The Inquiry recommended that all forces institute employment equity programs to achieve Aboriginal representation equivalent to the Aboriginal proportion of the Manitoba population. All forces report that they have such programs. The RCMP report that Aboriginal representation in Manitoba is between 10% and 11%. The Winnipeg police report that the 1998 percentage was between 8% and 9%. In Brandon it is 5%. All forces advise that cross-cultural training is provided during recruit training and afterward. All forces have policies to deal with issues of racism.

The report provided to the Commission did not indicate whether statements are videotaped or recorded.

#### ***Police Forces in Manitoba***

The Inquiry recommended that as soon as possible, Aboriginal police forces take over from the RCMP the responsibility for providing all police services in Aboriginal communities. Manitoba currently has one Aboriginal regional police force, the Dakota Ojibway Police Service, responsible for policing four First Nation communities, and two RCMP First Nation Community Police Services, at Chemawawin First Nation and Swan Lake First Nation.

#### ***Aboriginal Systems of Policing***

Recommendations in this area have largely not been implemented.



***Public Complaints and Policing in Manitoba***

Recommendations in this area have largely not been implemented.

**Strategy for Action*****Aboriginal Justice Commission***

The Inquiry recommended that the Aboriginal Justice Commission be established by legislation and that the Commission serve a range of functions. The Aboriginal Justice Implementation Commission was created by Order-in-Council, under the Justice Act to advise the Minister of Justice and the Minister of Aboriginal and Northern Affairs on the recommendations of the Aboriginal Justice Inquiry.

***Aboriginal Justice College***

The Aboriginal Justice College has not been established.

***Affirmative Action***

An Employment Equity Commission has not been established by legislation. The Commission has been advised that the duties of the Commission are carried out by the Civil Service Commission and the Civil Service Commission Board.

**SCHEDULE 3****Aboriginal Justice Implementation Commission****Recommendation on Services for Children and Families**

The Aboriginal Justice Implementation Commission was established by Order-in-Council 459, November 24, 1999, to advise the government on methods of implementing recommendations of the Report of the Aboriginal Justice Inquiry (1991) for which the Province of Manitoba is responsible and accountable.

The Commission is to provide status reports and implementation recommendations on a quarterly basis but is also authorized to make any particular recommendations when appropriate. The Commission considers Families and Child Welfare to be a high priority.

The Recommendations of the Aboriginal Justice Inquiry in the area of Child Welfare were:

1. The provincial government establish the Office of Child Protector, responsible to the Legislature, as recommended in the Kimelman Report. This office's responsibilities would be, among other things:
  - a) To ensure that children involved with the child welfare system have their interests and rights protected.
  - b) To receive and investigate complaints about the manner of treatment of children by child welfare agencies.
2. Aboriginal and non-Aboriginal child and family service agencies be provided with sufficient resources to enable them to provide the communities they serve with the full range of direct service and preventive programs mandated by the Child and Family Services Act.
3. The federal and provincial governments provide resources to Aboriginal child and family service agencies for the purpose of developing policies, standards, protocols and procedures in various areas, but particularly for the purpose of developing computer systems that will permit them to communicate quickly and effectively with other agencies, to track cases and to share information.
4. Principle 11 of the Child and Family Services Act be amended to read: "Aboriginal people are entitled to the provision of child and family services in a manner which respects their unique status, and their cultural and linguistic heritage.

5. The Province of Manitoba in conjunction with the Manitoba Metis Federation develop a mandated Métis child and family service agency with jurisdiction over Métis and non-status children throughout Manitoba.
6. The jurisdiction of the reserve-based Indian child and family service agencies be extended to include off-reserve band members.
7. Indian agencies be provided with sufficient resources to ensure that this expanded mandate be effectively carried out.
8. A mandated Aboriginal child and family service agency be established in the city of Winnipeg.

The Commission is aware that the Office of the Children's Advocate has been established and that a number of additional mandated First Nations Child Welfare agencies have also been established since 1991. However, neither a Métis agency nor a Winnipeg agency has been established.

The Commission recommends that:

**The Government of Manitoba seek to enter into agreement with the Assembly of Manitoba Chiefs and the Manitoba Metis Federation to develop a plan that would result in First Nations and Métis communities developing and delivering Aboriginal child welfare services.**

The Commission makes this recommendation now because we understand that both the Government and Aboriginal representatives are willing to take such action and because of the importance of children and families. The Framework agreement between the Federal Government and the Assembly of Manitoba Chiefs highlights child welfare as does the tripartite agreement between the Manitoba Government, the Federal Government, and the Manitoba Metis Federation. Since the Report of the Aboriginal Justice Inquiry, the Royal Commission on Aboriginal Peoples has also recognized the importance of the area by making a range of recommendations in its final report in 1995.

The social significance of the family and child welfare is also recognized by the international community in various standards, such as the Convention on the Rights of the Child, which states that,

"... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community."

This view is also reflected in the values of Aboriginal societies.

“... The Creator gave us life as men and women and family is life itself. The children are a sacred responsibility who need to be taught our values to continue the Strength of the Nation.”

Eva McKay, Elder

The Commission will continue to pursue its mandate to consider appropriate recommendations in this area to meet the requirement in its terms of reference to provide practical, cost-effective and attainable implementation and funding strategies.

## SCHEDULE 4

### Aboriginal Justice Implementation Commission

#### Recommendation on the Interpretation Act of Manitoba

The Aboriginal Justice Implementation Commission was established by Order-in-Council 459, November 24, 1999, to advise the government on methods of implementing recommendations of the Report of the Aboriginal Justice Inquiry (1991) for which the Province of Manitoba is responsible and accountable.

The Commission is to provide status reports and implementation recommendations on a quarterly basis but is also authorized to make any particular recommendations when appropriate.

The Commission has been advised that the Government of Manitoba may be introducing a revised Interpretation Act in the next session of the Manitoba Legislature. The Aboriginal Justice Inquiry noted that:

“One specific legislative change that could be implemented quickly, if Aboriginal organizations in this province agree, is in the area of the general *Interpretation Acts* of Manitoba and Canada. These acts deal with general principles of statutory interpretation and also provide rules and principles that apply unless a particular statute contains a provision that clearly has a different effect. Express recognition of Aboriginal and treaty rights within these laws would have a positive effect and assist in ensuring that all legislation is interpreted properly in light of these constitutionally protected rights.”

The Inquiry then recommended that the Interpretation Acts of Manitoba and Canada be amended to provide that all legislation be interpreted subject to Aboriginal and treaty rights.

The Commission has consulted with Aboriginal organizations and found that those organizations agree with the recommendation. Therefore, the Commission recommends that:

**The Interpretation Act of Manitoba be amended to provide that all legislation be interpreted subject to Aboriginal and treaty rights.**

The Inquiry made other recommendations in the area of statutes in conflict with Aboriginal and treaty rights and the Commission is continuing to review those recommendations.

**SCHEDULE 5****Aboriginal Justice Implementation Commission****Recommendation on the Minerals within Indian Reserves**

The Aboriginal Justice Implementation Commission was established by Order-in-Council 459, November 24, 1999, to advise the government on methods of implementing recommendations of the Report of the Aboriginal Justice Inquiry (1991) for which the Province of Manitoba is responsible and accountable.

The Commission is to provide status reports and implementation recommendations on a quarterly basis but is also authorized to make any particular recommendations when appropriate.

The Aboriginal Justice Inquiry noted that the Province of Manitoba, on the basis of section 12 of the Manitoba Natural Resources Transfer Agreement, currently claims a 50% share in the "minerals" that are extracted from Indian reserve lands. The Inquiry could not see a basis for the Province of Manitoba claim to any interest in minerals on Indian reserves, and thus recommended that:

"In keeping with provincial fiduciary obligations and to assist in the economic advancement of First Nations, the Province of Manitoba formally renounce its half interest in minerals within Indian reserves."

The Commission was advised that while Manitoba has not formally renounced its half interest in minerals within Indian reserves the Province has never claimed any interest in surface and sub-surface minerals on reserves. In addition, in the Treaty Land Entitlement Framework Agreement signed in 1997, the Province relinquished its claim to mines and minerals transferred to First Nations to settle Treaty Land Entitlement claims. Given these facts the Commission recommends that:

**The Province of Manitoba formally renounce its half interest in minerals within Indian reserves.**

The Commission will continue reviewing the recommendations of the Aboriginal Justice Inquiry in the area of Natural Resources and Aboriginal rights.



## SCHEDULE 6

### **Aboriginal Justice Implementation Commission**

#### **Recommendation on Métis Issues**

The Aboriginal Justice Implementation Commission (AJIC) was established by Order-in-Council 459, November 24, 1999, to advise the government on methods of implementing recommendations of the Report of the Aboriginal Justice Inquiry (1991) (AJI) for which the Province of Manitoba is responsible and accountable.

The Commission is to provide status reports and implementation recommendations on a quarterly basis but is also authorized to make any particular recommendations when appropriate.

The Aboriginal Justice Inquiry made a number of recommendations related to the Métis. The Royal Commission on Aboriginal Peoples (RCAP) devoted an entire chapter to Métis perspectives and urged the adoption of a range of policies and other reforms concerning Métis people

#### ***Aboriginal Justice Implementation Commission Consultation on Métis Priorities***

The Manitoba Métis Federation (MMF) is the provincial political representative organization of the Métis people. Métis persons are residents of the Province, and as such, have the same burdens and benefits as all provincial residents. As provincial residents and Canadian citizens, they are represented by their MLAs and MPs respectively. But the Métis people are also part of the 'Métis people' whose unique rights are recognized and affirmed by the Constitution of Manitoba and Canada. The MMF is the provincial advocate for Métis rights.

Both the AJI and the RCAP recognized the significance of these factors. The AJI consulted with the MMF on Métis issues, and made special recommendations involving the MMF.

In the spirit of the AJI and the RCAP, the AJIC consulted with the MMF on the priorities of the Métis people in the Province. These were identified as the following:

- The recognition and protection of the rights of the Métis in the Province including:
  - Protection of Métis interests from Northern hydroelectric developments
  - Protection of Métis interests in the Treaty Lands Entitlement process
  - Policies and actions to establish certainty in the law pertaining to the nature and scope of Métis rights

- Clarification of provincial jurisdiction and responsibility concerning Métis people
- Discussions on progress concerning the MMF litigation relating to Métis lands provisions in the Constitution of Manitoba
- Increasing Métis participation in the Winnipeg Police Force
- Discussions on establishing an enumeration and registry of Métis persons in the Province
- Concerns regarding the Métis commercial fishing industry and Métis hunting rights.

### ***Initial Observations of AJIC***

Both the AJI and the RCAP have suggested that the Province must take action to perform its lawful obligations under the Constitution in respect to Métis issues.

The scope of provincial jurisdiction and responsibility pertaining to Métis is not clear. Sound policies cannot be implemented without a clarification of provincial jurisdiction and responsibility. In this regard sound policies are those that may reasonably be expected to endure and be upheld by the courts of the Province and Canada.

The courts have emphasized that in respect to the rights of the aboriginal peoples, it is better to negotiate than to litigate, and there is current litigation on Métis issues involving the Province.

The Métis people were partners in the creation of the Province of Manitoba. Some of their basic rights were given Constitutional protection in the Constitution that gave the Province its authority to govern. The Métis today have grievances respecting Provincial policies and their application as they affect their interests. Such a sense of grievance is injurious to the public interest in a democratic political system and ought to be addressed.

### ***Recommendation***

Therefore the Commission recommends that:

**Representatives of the Province enter forthwith into discussions with the MMF to begin the process of addressing matters within the jurisdiction of Manitoba that have been the subject of recommendations by the AJI and the RCAP.**

The AJIC will continue to review and act upon its mandate in respect to the AJI recommendations pertaining to Métis issues.



